IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

TUESDAY, THE 20TH FEBRUARY 2007 / 1ST PHALGUNA 1928

CRL.A.No. 2246 of 2006()

AGAINST THE JUDGEMENT/ORDER IN CRLP.579/2006 Dated 07/11/2006
CC.710/2004 of ADDL.CHIEF JUDICIAL MAGISTRATE (E & O),ERNAKULAM

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APPELLANT: COMPLAINANT

M/s.ANAND PAINTS, CLOTH BAZAR ROAD,
ERNAKULAM, KOCHI,
REPRESENTED BY ITS MANAGING PARTNER AND
POWER-OF-ATTORNEY HOLDER, T.SUDHAKARAN.

BY ADV. SRI.P.V.GEORGE(ONAKKOOR)

RESPONDENTS: ACCUSED & STATE:

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1. M/S.LAKSHMI ENTERPRISES,
HARDWARE MERCHANTS, JANATHA JUNCTION,
PALARIVATTOM.

2. MR.K.A.KRISHNA NAIK,
PARTNER, M/S.LAKSHMI ENTERPRISES,
JANATHA JUNCTION, PALARIVATTOM.

3. MR.K.UMESH NAIK,
PARTNER, M/S.LAKSHMI ENTERPRISES,
JANATHA JUNCTION, PALARIVATTOM.

4. MR.K.RAMESH NAIK,
PARTNER, M/S.LAKSHMI ENTERPRISES,
JANATHA JUNCTION, PALARIVATTOM.

5. MR.K.SATHEESH NAIK,
PARTNER, M/S.LAKSHMI ENTERPRISES,
JANATHA JUNCTION, PALARIVATTOM.

6. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.M.A.JOSEPH MANAVALAN
SRI.SOORAJ T.ELENJICKAL
SMT.GAYATHRI VIJAYAN
BY PUBLIC PROSECUTOR SRI.MUHAMMED PUZHAKKARA.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 20/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M. JAMES, J.

Criminal Appeal No.2246 of 2006

Dated this the 20th February, 2007.

J U D G M E N T

The complaint of the appellant is that when the case was posted for recording Section 313 Cr.P.C. statement of the accused, it was dismissed on the ground that the complainant was absent before the court below. The complainant was examined as PW.1. He also adduced all the evidence. On the appointed day, on 27.7.2006, the presence of the complainant was not necessary before the court below, as the examination of the accused alone was needed. The dismissal of the complaint and acquittal of the accused is under challenge through this appeal, after obtaining leave of this Court.

2. I have heard the arguments advanced by either side. Respondents 1 to 5 are the Partnership Firm and the partners therein. In the order of the learned Magistrate, it is stated that the name of the complainant was called thrice on that day, and there was no representation. Counsel for the appellant, however, submits that though the complainant was present in the court, no submission was made, as the counsel for the complainant was absent in the court, at the time when the case was taken up.

3. As the evidence from the side of the complainant had already been adduced, as far as the appellant is concerned, it is only just and proper that an opportunity be given to both sides, in continuing with the matter, as per the law.

4. Therefore, I set aside the impugned order, dated 27.7.2006, and restore C.C.No.710/2004, to the file of the Additional Chief Judicial Magistrate (Economic Offences), Ernakulam.

5. The parties shall appear before the court below on 15.3.2007.

6. The learned Magistrate shall proceed with the matter, from the stage at which the case stood at the time of the acquittal of the accused and dismissal of the complaint. The matter shall be disposed of, at the earliest, and in any case, within two months from the date of appearance of the parties.

Criminal Appeal is allowed accordingly.

J.M. JAMES,
JUDGE

nj.